IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.313 OF 2004
(For condonation of delay)

ALONG WITH

CRIMINAL APPLICATION NO.1255 OF 2005
(For leave to appeal)

The State of Maharashtra — Applicant
vs.
Appa Mukinda Jadhav — Respondent

Ms.V.R.Bhonsale, Addl. Public Prosecutor for the State.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 23rd February 2005

P.C.

In Sessions Case No.40/2002, the accused was put up for trial for the offences punishable under Sections 363, 366, 376 and 506 of the Indian Penal Code.. The accusation against the accused was that he kidnapped Prabha Netaji Ghadage for the purpose of illicit intercourse and committed rape on her under threat of murder. The VIth Additional Sessions Judge, Satara, upon conclusion of the trial, held that the prosecution failed to establish that the accused kidnapped Prabha or that he committed sexual intercourse with her against her will or that the accused threatened to kill her. Consequently, by judgement dated 17th May 2003 the trial Court acquitted the accused. Dissatisfied with the

judgement of acquittal, the State presented criminal appeal (now criminal application for leave to appeal) on 16th January 2004. By criminal application no.313/2004 the delay in filing the criminal appeal (now criminal application' for leave to appeal) is sought to be condoned.

2. As already noticed above, the judgement of acquittal was passed by VIth Additional Sessions Judge, Satara on 17th May 2003. The application for certified copy was made on 26th May 2003. The certified copy was ready on 5th June 2003 and delivered to the concerned Public Prosecutor on 16th June 2003. The concerned Public Prosecutor vide his opinion dated 17th July 2003 to the Law and Judiciary Department recommended appeal to be filed against the judgement of acquittal. The Law and Judiciary Department scrutinised the papers and vide resolution dated 1st August 2003 asked the Public Prosecutor, High Court, Appellate Side, Mumbai to file an appeal. The appeal was presented on 16th January 2004. The only ground set forth for condonation of delay is that due to heavy pressure of work on the available staff and due to non-availability of stenographers/typists, it took considerable time in preparing and filing the appeal.

3. The aforesaid ground is stereotype and is being set

up in almost all applications for condonation of delay. We thought that that was our experience. However, we find that almost a year back the Division Bench of this Court (Shri S.S.Parkar & Smt.V.K.Tahilramani,JJ.) had same experience and observed that stock explanation in identical words in several matters is put forth by the State in applications for condonation of delay. The Division Bench in its order dated February 6, 2004 in Criminal application no.303/2004 in Criminal Appeal No.79/2004 observed thus:

> "1. In filing this appeal, there is delay of 128 days i.e. delay of four months and eight days. The entire delay has taken place in the office of the Public Prosecutor, High Court, Bombay. As per this application, the papers were received by the office of Public Prosecutor, High Court, Bombay on 16/8/2003 and the appeal came to be filed on 15/1/2004. Thus, no action was taken in the matter by the office of the Public Prosecutor, High Court, Bombay for a period of four months and eight days. The only explanation given for delay in filing the appeal is mentioned in paragraph 4 of this application which was a stock explanation given in identical words in several matters by that office to which the attention of the Law Ministry was drawn in some matters last year. In many matters this court had imposed cost on the State Government for filing appeals after a considerable delay without there being any adequate explanation, but nothing seems to have improved the functioning of the office of the Public Prosecutor, High Court, Bombay and the remarks passed by this curt and the cost imposed against the State have no effect at all."

4. We need not comment except saying that the State or its functionaries must blame themselves for the state of

affairs. The explanation does not constitute sufficient cause and no case for condonation of delay is made out.

5. Criminal application for condonation is accordingly rejected.

6. Though criminal application for leave to appeal is time barred and the application for condonation of delay having been rejected by us, the criminal application for leave to appeal is liable to be rejected, yet we wanted to satisfy ourselves whether a case for grant of leave is made out if the application for leave to appeal was within time and consequently we perused the impugned judgement and heard the learned Additional Public Prosecutor.

7. It is reflected from the impugned judgment that the age of the girl as per the evidence of her father and mother was about 18 years at the time of incident. The medical evidence through Dr.J.D.Deshpande suggested that the age of the victim was between 14 to 18 years yet in the absence of birth certificate, the view of the learned trial Judge that the girl was about 18 years old cannot be faulted. Once it is held that the girl was about 18 years old, in law she was capable of giving her consent and the facts that are revealed from the prosecution evidence do suggest that the girl went with

the accused on her own and stayed with him on her own for the period from 24.11.2001 until 4.12.2004 and without any threat. The consideration of the matter by the learned trial Judge thus seems to be proper.

8. Accordingly, both the applications being criminal application no.313/2004 for condonation of delay and the criminal application no.1255/2005 for leave to appeal are rejected.

(R.M.LODHA,J.)

(R.S. MOHITE,J.)